



PATENT
ATTORNEY DOCKET NO.: 040894-7392

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Nobuaki YAGI)	Confirmation No.: 5562
)	
Application No.: 10/567,860)	Art Unit: 3721
)	
Filed: February 10, 2006)	Examiner: L. Low
)	
For: PAPER-PRESSING TABLE LOCK)	Mail Stop AF
MECHANISM OF A STAPLER)	
(AS AMENDED))	

Mail Stop AF,
Commissioner for Patents
U.S. Patent and Trademark Office
Alexandria, VA 22314

Madam:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

In response to the Final Office Action of July 24, 2008 hereinafter ("Office Action"), Applicant respectfully requests a pre-appeal brief review of the pending rejections. A Notice of Appeal having a petition for extension of time and fee payment authorization therein is filed concurrently herewith. Applicant arguments follow.

At issue are claims 1-3 rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,791,543 to *Udagawa, et al.*, ("*Udagawa*"), in view of Admitted Prior Art. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness at least because *Udagawa*, whether alone or in combination, fails to teach or suggest all the recited features of independent claim 1. Independent claim 1 recites, in part, "a fixing plate linearly slidable with respect to the fixing pin and engagable with the fixing pin to lock the table link in a paper-pressing state . . . wherein the table link and the fixing plate are separate members, and the table link and the fixing plate are relatively movable to each other." These

features are not found in *Udagawa*. Thus, *Udagawa* fails to teach or suggest at least these features of independent claim 1.

The Office Action states in section 8 on page 4, that *Udagawa* fails to disclose “the table link and fixing plate being separate members.” The previous Office Action asserted member 152 of *Udagawa* was the claimed “table link,” and member 152A of *Udagawa* was the claimed “fixing plate.” Nevertheless, the current Office Action takes Official Notice of the corresponding structure in *Udagawa* may be separated into two parts as in the present invention. However, these assertions are impossible because members 152 and 152A are portions of the same member and are an integral structure. See, for example, Figs. 3 and 17 of *Udagawa*. Claim 1 requires that the table link and fixing plate be separate members and the fixing plate be capable locking the table link in a paper-pressing state. It is impossible for the fixing plate to lock the table link if they are integrated portions of the same member, as is the case in *Udagawa*.

Further, the features “wherein the table link and the fixing plate are separate members, and the table link and the fixing plate *are relatively movable to each other*,” further delineate that the alleged table link 152 and alleged fixing plate 152A of *Udagawa* cannot make obvious claim 1 because they must be relatively movable to each other. Emphasis added. In contrast, in the present invention, Fig. 2 shows the table link (3) and the fixing plate (5) are separate members and are relatively movable to each other. Thus, *Udagawa* cannot make obvious the present invention.

The Office Action erroneously states that the rejection of claims 1-3 is also in view of Admitted Prior Art (APA), but then indicates that the Examiner is taking Official Notice that it would have been obvious to form a structure as two separate parts. However, this Official Notice is also defective because “Official notice unsupported by documentary evidence should

only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known." See M.P.E.P. § 2144.03. The Official Notice taken is not appropriate because the Examiner's alleged facts are not well-known or common knowledge within the art. Further, the table link 3 and fixing plate 5 of the present invention (Fig. 1) cannot be the alleged table link 152 and alleged fixing plate 152A of *Udagawa* because they accomplish very different purposes and so must be separated. That is, the table link 3 connects the table 8 (and movable clincher) to the main body of the stapler, while the fixing plate 5 is utilized in combination with other parts to place the table link 3 in a locked position to improve stapler performance. Thus, the table link 3 and the fixing plate 5 must be separate components in order to achieve the desired performance and cannot be the integrated alleged table link 152 and alleged fixing plate 152A of *Udagawa*.

As pointed out in M.P.E.P. § 2143.03, all the claimed limitations must be taught or suggested by the prior art to establish *prima facie* obviousness of a claimed invention. Because *Udagawa*, whether taken alone or in combination, fails to teach or suggest each feature of independent claim 1, the rejection under 35 U.S.C. § 103(a) should be withdrawn.

Additionally, Applicant respectfully submits that dependent claim 2-3 are also allowable insofar as they recite the patentable combinations of features recited in claim 1, as well as reciting additional features that further distinguish over the applied prior art.

Applicant respectfully requests that the review panel withdraw the rejection of claims 1-3 for all the reasons above-mentioned. Applicants re-assert that Official Notice is not appropriate because the Examiner's alleged facts are not well-known or common knowledge within the art and have not been shown to be capable of instant and unquestionable demonstration as being well-known. See M.P.E.P. § 2144.03.

CONCLUSION

In view of the foregoing, reconsideration and timely allowance of the pending claims are respectfully requested. If there are any other fees due in connection with the filing of this response, please charge the fees to our Deposit Account No. 50-0310. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

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Dated: December 22, 2008

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